July 2015
FACT SHEET
Authorization to Discharge under the National Pollutant Discharge Elimination System for the Navajo Transitional Energy Company – Navajo Mine NPDES Permit No. NN0028193

Applicant address: BHP Billiton Mine Management Company
P.O. Box 1717
Fruitland, New Mexico 87416

Applicant Contact: Daphne Place-Hoskie, Superintendent
Environmental Analysis and Improvement
(505) 598-2003

Facility Address: Navajo Mine
16 miles Southwest of Fruitland
Fruitland, New Mexico 87416

Facility Contact: Daphne Place-Hoskie, Superintendent
Environmental Analysis and Improvement

I. Status of Permit

BHP Navajo Coal Company ("BNCC") was first issued National Pollutant Discharge Elimination System ("NPDES") Permit No. NM0028193 on March 28, 1977, covering operations of Navajo Mine. Since then, the permit has been renewed several times. On December 14, 2005, the permit number was modified by replacing the two-letter prefix from NM to NN (Navajo Nation). The most recent permit was issued on March 5, 2008, became effective on April 7, 2008, and was to expire on April 6, 2013. BNCC submitted a timely application to renew the permit on October 2, 2012, and the permit was administratively extended until such time as a renewed permit is issued. In a series of transactions, 100% of BNCC's ownership interest in Navajo Mine was transferred to Navajo Transitional Energy Company, LLC ("NTEC") on December, 30 2013. NTEC, BNCC's successor in Navajo Mine, entered into a mine management agreement with BHP Billiton Mine Management Company ("MMCo") pursuant to which MMCo will operate the Mine consistent with applicable regulatory requirements on behalf of NTEC.

MMCo, as Applicant, proposes in its new NPDES application the renewal of 13 existing outfalls and the approval of 26 new outfalls. The 13 existing outfalls and 12 of the 26 new outfalls are located either within the currently approved Surface Mining Control and Reclamation Act ("SMCRA") permit area (SMRCA Permit No. NM-003F), or within Area IV North of the Navajo Mine, which application under the current permit is pending. An approved mine plan revision for Area IV North was vacated on April 6, 2015 by the U.S. District Court for Colorado pending further analysis under NEPA by the Office of Surface Mining Reclamation and Enforcement (OSM). NM-003F). The remaining 14 outfalls are located within a new proposed SMCRA permit

area (SMCRA Permit No. NM-0042A). The new proposed SMCRA permit area will be considered a "new source" for purposes of the NPDES permit.

MMCo also maintains coverage under the federal Multi-Sector General Permit ("MSGP") for stormwater discharges associated with industrial activities at Navajo Mine. BNCC submitted a Notice of Intent ("NOI") for coverage under the 2008 MSGP on May 5, 2009. U.S. EPA issued coverage on June 4, 2009 (Tracking No. NMR05FW0I.) BNCC conducted a MSGP Annual Comprehensive Inspection on June 27, 2012. This report identified 10 corrective actions that were taken as a result of the annual comprehensive site inspection. On November 22, 2013 MMCo, on behalf ofNTEC, BNCC's successor in interest, submitted a letter to USEPA confirming that it will operate under the "no action assurance" and/or the administrative continuance described in the September 27, 2013 Guidance Memo ("Memo") from Cynthia Giles, EPA Assistant Administrator for Enforcement and Compliance Assurance. MMCo certified that it will meet all requirements of the 2008 MSGP and the Memo and will notify the appropriate EPA NPDES permitting authority prior to the discharge of any stormwater associated with industrial activity.

II. Description of Facility(Background)

The NTEC (successor in interest to BNCC) Navajo Mine is located in Fruitland, San Juan County, New Mexico; within the northeastern portion of the Navajo Nation. The Navajo Mine lease area is divided into six areas (I, II, II, IV North, IV South, and V). Currently, all mining activity is occurring in Area III. Reclamation activities are ongoing in Areas I-III.

The United States Department of Interior Office of Surface Mining Reclamation and Enforcement ("OSM") issued BNCC (now NTEC) SMCRA permit No. NM-0003F in September 2004. This permit allows NTEC to operate through July 2016. NTEC is proposing to expand its mining and reclamation activities into portions of Area IV North and Area IV South, called the Pinabete Permit area (SMCRA Permit No. NM-0042A) within its Navajo Mine Lease. These operations will be in conjunction with the existing Navajo Mine Permit area. The proposed Pinabete SMCRA permit application is part of the Four Corners Power Plant and Navajo Mine Energy Project, which is currently undergoing environmental review by OSM.

In January 2008, the Navajo Mine stopped accepting coal combustion by-products ("CCBs") from the Four Corners Power Plant ("FCPP") and ceased using CCBs as mine backfill. From 1971 to 2008, CCBs from FCPP were placed in mined out pits and ramps in Areas I and II. These areas have been capped with approximately 10 feet of low permeability material, in accordance with the Navajo Mine Lease and the Navajo Mine SMCRA permit. There are no future plans to utilize CCBs as backfill at Navajo Mine. The disposal of all CCB material produced by FCPP is the responsibility of the Arizona Public Service Co. ("APS").

III. Receiving Water

The proposed discharge points are all to waterbodies within the external boundaries of the Navajo Nation and are subject to the jurisdiction of the Navajo Nation. The Navajo Nation's Resource Committee promulgated the Navajo Nation Surface Water Quality Standards

("NNSWQS") on November 9, 1999, and amended them on May 13, 2008. The Navajo Nation applied for and received recognition from U.S. EPA to be treated in the same manner as a state ("TAS") under CWA Section 106 in [Insert Date]. U.S. EPA approved the NNSWQS pursuant to CWA Section 303 in 2006. The NNSWQS therefore serve as the applicable water quality standards for purposes of this NPDES permit renewal.

Table 205.1 of the NNSWQS defines the designated uses of the Chaco River and Morgan Lake to be: Primary Human Contact ("PrHc"), Secondary Human Contact ("ScHc"), Fish Consumption ("FC"), Aquatic and Wildlife Habitat ("A&WHbt"), and Livestock Watering ("LW"). There are a total of 39 Outfalls. Outfalls No. 004, 006-011, 013, 017-019 (renewals) and all 26 of the new outfalls discharge to Chaco River which is a tributary to the San Juan River. Outfalls No. 001 and 002 (renewal) discharge to Morgan Lake, a manmade cooling pond which intakes water from the San Juan River and provides cooling water to the Four Corners Power Plant. Under APS's NPDES Permit NN0000019, APS is authorized to discharge water from Morgan Lake to No Name Wash which eventually discharges to the Chaco River.

IV. Description of Discharge

The Navajo Mine experiences three general situations which may result in a discharge to protected waterbodies. . These are categorized as Alkaline Mine Drainage, Coal Preparation Plants and Coal Preparation Plant Associated Areas, and Western Alkaline Coal Mining. Alkaline Mine Drainage is surface runoff from: topdressing removal; overburden drilling, storage, and stripping; mining pits; spoil rows or piles; re-graded spoils; and primary/final re-grading of the last spoil row. Coal Preparation Plants and Coal Preparation Plant Associated Areas contain runoff from coal storage, coal preparation, and ancillary areas (coal stockpiles, the coal plant, maintenance shops, and associated areas). Surface water in both areas can be discharged from impoundments that are designed to capture flow from a minimum 10 year 24 hour (10yr-24hr) precipitation event or may be pumped from the impoundments. The discharge may occur unintentionally from overflow or intentionally from pumping out from the impoundments. Treatment before discharge may include allowing sediment to settle, evaporation, or discharging through approved outfalls. The Western Alkaline Coal Mining includes runoff from brushing and grubbing, topsoil stockpiles, re-graded surface areas, and reclamation areas. Discharge will take place from reconnected native drainages that surround the permit area, once sufficient sediment control measures have been installed to demonstrate average annual sediment yields are less than pre-mined levels.

Twenty-five of the new outfalls are categorized as Alkaline Mine Drainage and one is categorized under Coal Preparation Plants and Coal Preparation Plant Associated Areas. The same treatment methods that are mentioned above will be followed.

Discharges covered by the existing NPDES permit have historically been rare. There have been ten NPDES discharges at Navajo Mine since the issuance of the original NPDES permit in March 1977. Nine have occurred at Outfall No. 008 as a result of precipitation events. One has occurred at Outfall No. 002.

V. Regulatory Basis of Proposed Effluent Limits

Section 301(a) of the CWA provides that the discharge of any pollutant to waters of the United States is unlawful without a NPDES permit. Section 402 of the CWA establishes the NPDES program. The program is designed to limit the discharge of pollutants into waters of the U.S. from point sources (40 CFR §122.1(b)(1)) through a combination of various requirements including technology-based and water quality-based effluent limitations.

1. Technology-based effluent limitations

Under 40 CFR §125.3(c)(2), technology-based treatment requirements may be imposed on a case-by-case basis under CWA section 402(a)(1), to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in 40 CFR §125.3(d). In addition, the regulation allows the permit writer to consider the appropriate technology for the category or class of point sources and any unique factors relating to the applicant.

The discharge of wastewater from coal mines is subject to 40 CFR Part 434: Coal Mining Point Source Category, Best Practicable Control Technology Currently Available ("BPT"), Best Available Technology Economically Achievable ("BAT"), Best Conventional Pollutant Control Technology ("BCT") Limitations and New Source Performance Standards ("NSPS"). Navajo Mine has the potential to discharge from separate sources that are subject to subcategories of Part 434.

Navajo Mine is classified under Part 434 as an "alkaline, mine drainage," which is defined as mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/l. The current permit contains limitations for the following outfall subcategories: a) Alkaline Mine Drainage, b) Coal Preparation Plants and Coal Preparation Plant Associated Areas, and c) Western Alkaline Reclamation. The proposed permit will include NSPS for each of these subcategories which address the 26 new outfalls.

A. Existing Outfalls 006, 007, 008, 011, 013, 019 –Alkaline Mine Drainage

The proposed permit sets limits for these outfalls in accordance with the requirements of "Subpart D – Alkaline Mine Drainage" for BPT, BCT, and BAT regulations that apply to such discharges. The proposed permit sets discharge limits for these outfalls for:

Effluent Parameter	Units	Daily Average	Daily Maximum
Iron, total	mg/l	3.5	7.0
Total Suspended Solids (TSS)	mg/l	35	70
pH	Std. Units	No less than 6.0 or greater than 9.0	

These requirements are consistent with those of the previous permit.

B. New Outfalls – Alkaline Mine Drainage, NSPS

Outfalls:	020	4-2	4-7	4-12	4-18
	021	4-3	4-8	4-13	4-19
	022	4-4	4-9	4-15	4-20
	023	4-5	4-10	4-16	4-21
	4-1	4-6	4-11	4-17	4-22

These outfalls are determined to be "new source coal mine" activity under 40 CFR §434.11(j)(1)(ii)(C) and therefore will be subject to NSPS under "Subpart D – Alkaline Mine Drainage". The proposed permit sets discharge limits for these outfalls for:

Effluent Parameter	Units	Daily Average	Daily Maximum
Iron, total	mg/l	3.0	6.0
Total Suspended Solids (TSS)	mg/l	35	70
pH	Std. Units	No less than 6.0 or greater than 9.0	

C. Existing Outfall 002 – Coal Preparation Plants and Coal Preparation Plant Associated Areas

This outfall meets the definition in 40 CFR §434.11(e), (f), and (g) for "coal preparation plant", "coal preparation plant associated areas", and "coal preparation plant water circuit", respectively. The proposed permit sets limits for the outfall in accordance with "Subpart B – Coal Preparation Plants and Coal Preparation Plant Associated Areas" for BPT, BCT, and BAT regulations that apply to such discharges. The proposed requirements for Outfall 002 are:

Effluent Parameter	Units	Daily Average	Daily Maximum
Iron, total	mg/l	3.5	7.0
Manganese, total	mg/l	2.0	4.0
Total Suspended Solids (TSS)	mg/l	35	70
pH	Std. Units	No less than 6.0 or greater than 9.0	

These requirements are consistent with those of the previous permit.

D. New Outfall 4-14 – Coal Preparation Plants and Coal Preparation Plant Associated Areas, NSPS

This outfall is determined to be a "new source coal mine" activity under 40 CFR §434.11(j)(1)(ii)(C) and will therefore be subject to NSPS under "Subpart B – Coal Preparation Plants and Coal Preparation Plant Associated Areas". The proposed permit

sets discharge limits for this outfall to be:

Effluent Parameter	Units	Daily Average	Daily Maximum
Iron, total	mg/l	3.0	6.0
Manganese, total	mg/l	2.0	4.0
Total Suspended Solids (TSS)	mg/l	35	70
pH	Std. Units	No less than 6.0 or greater than 9.0	

E. Existing Outfalls 001, 004, 009, 010, 017, and 018 – Western Alkaline Coal Mining

These outfalls meet the definition of "Subpart H – Western Alkaline Coal Mining", which "applies to alkaline mine drainage at western coal mining operations from reclamation areas, brushing and grubbing areas, topsoil stockpiling areas, and re-graded areas." (40 CFR §434.81(a)) In accordance with the requirements established in Subpart H, the Applicant has:

1) Submitted a site-specific Sediment Control Plan to U.S. EPA incorporating the minimum requirements of 40 CFR §434.82,

2) Demonstrated that implementation of the Sediment Control Plan will result in average annual sediment yields that will not be greater than the sediment yield levels from pre-mined undisturbed conditions.

The Applicant submitted these materials to U.S. EPA as part of their NPDES permit package on October 2, 2012. These materials are part of the Administrative Record for the proposed permit and are available for public review.

U.S. EPA approved the Sediment Control Plan consistent with the requirements of Subpart H. Additionally, in accordance with Subpart H, the permit requires that the approved Sediment Control Plan be incorporated into the permit as an effluent limit, and requires that the Applicant design, implement, and maintain the Best Management Practices ("BMPs") in the manner specified in the Sediment Control Plan.

U.S. EPA Region IX and OSM entered a Memorandum of Understanding on December 19, 2003: "Process for Obtaining A NPDES Permit Under Subpart H – Western Alkaline Mine Drainage Category". Working through the process outlined in the MOU, OSM has conducted a technical review of the Sediment Control Plan submitted by the Applicant. OSM and U.S. EPA have concluded that the Sediment Control Plan has been submitted in accordance with the requirements of 40 CFR Part 434, and that the Sediment Control Plan meets all minimum requirements to demonstrate that the average annual sediment yields will not be greater than the sediment yield levels from pre-mined, undisturbed conditions. If comments are received on the proposed permit, U.S. EPA will continue to work with OSM and the Navajo Nation on the response prior to approving the Sediment Control Plan and prior to issuing this permit.

As existing outfalls defined in this permit as "alkaline mine drainage" are reclaimed, the Sediment Control Plan may be updated to incorporate additional outfalls. A revised Plan must be submitted to U.S. EPA and approved by U.S. EPA before it becomes effective. The revised plan will also be reviewed by OSM prior to U.S. EPA approving the revisions. Revisions to the Sediment Control Plan must meet all requirements contained at 40 CFR §434.82, and 100% of the drainage areas to an outfall must meet the definition of Subpart H to be considered for coverage under Subpart H. U.S. EPA's approval of an updated Sediment Control Plan and reclassification of an existing outfall from "alkaline mine drainage" to Subpart H requirements will be considered a minor modification to the permit.

2. Water Quality-Based Effluent Limitations

In addition to technology-based effluent limitations, Sections 402 and 301(b)(1)(C) of the Clean Water Act require that an NPDES permit contain effluent limitations that, among other things, are necessary to meet water quality standards. An NPDES permit must contain effluent limits for pollutants that are determined to be discharged at a level which has "the reasonable potential to cause or contribute to an excursion above any State [or Tribal] water quality standard, including State [or Tribal] narrative criteria for water quality." 40 CFR Section 122.44(3)(1)(i). To determine whether the discharge causes, has the reasonable potential to cause or contributes to an excursion of a numeric or narrative water quality criterion for individual toxicants, the regulatory authority must consider a variety of factors. 40 CFR Section 122.44(d)(1)(ii). These factors include the following:

- Dilution in the receiving water;
- Existing data on toxic pollutants;
- Type of industry;
- History of compliance problems and toxic impacts; and
- Type of receiving water and designated use.

Based on an analysis of factors at Navajo Mine operations and projected wastewater quality data provided in the application, U.S. EPA concludes that there continues to be no "reasonable potential" to cause or contribute to an exceedance of water quality standards for pollutants not previously identified as Technology based effluent limits above. However as proposed in the previous permit, EPA will continue to require monitoring for arsenic, boron, cadmium, lead, selenium, sulfate and TDS which may be present and may have the potential to cause or contribute to a violation of water quality standards. This is consistent with the previous permit.

The proposed permit sets general conditions based on narrative water quality standards contained in Section 202 of the NNSWQS. These standards are set forth in Section B ("General Discharge Specifications") of the permit.

VI. Anti-Backsliding/Anti-degradation

A. Anti-Backsliding

Section 402(o) of the CWA prohibits the renewal or reissuance of an NPDES permit that contains effluent limits less stringent than those established in the previous permit, except as provided in the statute. The permit does not establish any effluent limits less stringent than those in the previous permit and does not allow backsliding.

B. Anti-degradation Policy

EPA's anti-degradation policy at 40 CFR 131.12 and Navajo Nation Water Quality Standards require that existing water uses and the level of water quality necessary to protect the existing uses be maintained. As described in this document, the permit establishes effluent limits and monitoring requirements to ensure that all applicable water quality standards are met. The permit does not include a mixing zone, therefore these limits will apply at the end of pipe without consideration of dilution in the receiving water. The permit also establishes narrative discharge limits in the section entitled General Discharge Specifications which references the Navajo Nation narrative water quality standards. Furthermore, the receiving water bodies are not listed as an impaired for any limits established pursuant to the permit under section 303(d) of the CWA. Therefore, the discharge is not expected to adversely affect receiving water bodies or result in any degradation of water quality.

VI. Special Conditions

1. Monitoring for pollutants of concern

U.S. EPA has established monitoring for several parameters due to concerns raised during the comment period of the previous permit. Specifically, comments were raised about potential impacts from the disposal of CCBs generated at FCPP and used as backfill in Areas I and II. As noted previously in this document, NTEC has not accepted any CCBs since 2008 and does not have any current or future plans to place CCB materials as backfill for future reclamation within the Navajo Mine Lease. U.S. EPA does not believe that the CCBs have had a negative effect on surface water quality. U.S. EPA has provided a full response to these concerns in the Response to Comments document provided with the previous 2008 permit.

While U.S. EPA does not believe that Navajo Mine operations are contributing to an increase of pollutant concentrations in the Chaco River downstream of the mine, U.S. EPA notes that more effluent discharge data is needed for the pollutants of concern. Therefore, U.S. EPA will continue the required effluent monitoring, imposed as permit conditions to the 2008 renewal, at each of the discharge outfalls for the following pollutants: arsenic, boron, cadmium, lead, selenium, sulfate, and total dissolved solids.

U.S. EPA has included a reopener provision in the permit. If monitoring indicates that

the discharge has the reasonable potential to cause or contribute to an excursion of water quality criteria, U.S. EPA may reopen the permit to establish effluent limits for those parameters.

VII. Monitoring Requirements

The proposed permit requires discharge data obtained during the previous year to be summarized and reported monthly and submitted annually. If there is no discharge for the month, indicate "Zero Discharge". These reports are due January 28 of each year. Duplicated signed copies of these and all other reports required herein, shall be submitted to the Regional Administrator and the Navajo Nation EPA.

VIII. Threatened and Endangered Species

Section 7 of the Endangered Species Act (ESA) of 1973 requires federal agencies to ensure that any action authorized, funded, or carried out by a federal agency does not jeopardize the continued existence of a listed or candidate species, or result in the destruction or adverse modification of its habitat. 16 U.S.C. § 1536(a)(1). A federal agency must consult with the relevant Service, either U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service, if it determines that an endangered or threatened species is present in the area affected by the federal action and that the implementation of such action will likely affect the species. ESA §7(a)(3); 16 U.S.C. § 1536(a)(3).

U.S. EPA identified potentially occurring endangered and threatened species by first using the list generated by the USFWS for OSM for the broader Four Corners Power Plant and Navajo Mine Energy Project Proposed Action. OSM obtained a list of species to be considered from USFWS on January 23, 2014. A total of 39 species were identified as potentially occurring in the Action Area of the Four Corners Power Plant and Navajo Mine Energy Project which is much larger than, but overlaps the location of the Outfalls covered by this permit. A separate species list was obtained by U.S. EPA from USFWS on March 11, 2015 for the limited area that is the subject of this Action. Seven threatened or endangered species were identified. These species are listed below:

Birds

- Southwestern willow flycatcher (*Empidonax traillii extimus*): Endangered
- Yellow-billed cuckoo (*Coccyzus americanus*): Threatened

Fish

- Colorado pikeminnow (*Ptychocheilus lucius*) Endangered,
- Razorback sucker (*Xyrauchen texanus*) Endangered

Plants

- Mancos milk-vetch (*Astragalus humillimus)* Endangered
- Mesa Verde cactus (*Sclerocactus mesae-verdae)* Threatened
- Knowlton's cactus (*Pediocactus knowltonii*) Endangered.

Due to the overlap in the species and area potentially affected by the OSM and USEPA proposed actions, those agencies, the Permittee and the USFWS agreed to consider all of the federal actions in a single comprehensive ESA consultation

In analyzing the impacts of U.S. EPA's Action, U.S. EPA is relying on the Biological Assessment that the OSM prepared on the broader Four Corners Power Plant and Navajo Mine Energy Project. U.S. EPA is also relying on the Biological Opinion issued by USFWS on April 8, 2015, which considers the entire Four Corners Power Plant and Navajo Mine Energy Project Proposed Action, including explicitly the U.S. EPA's action on this NPDES Permit NN0028193.

OSM, in its Biological Assessment, determined that the Knowlton's cactus known range is outside the Proposed Action Area for the Four Corners Power Plant and Navajo Mine Energy Project, and it was thus eliminated from further analysis. OSM also determined that the Four Corners Power Plant and Navajo Mine Energy Project Proposed Action is not likely to adversely affect the Mancos milk-vetch and Mesa Verde cactus, and the USFWS concurred in this determination and concluded informal consultation with respect to these species.

USFWS' Biological Opinion, issued April 8, 2015, concludes that the Four Corners Power Plant and Navajo Mine Energy Project Proposed Action will not jeopardize the continued existence of or adversely modify or destroy the critical habitats of the above referenced fish and bird species. The Biological Opinion includes non-discretionary Reasonable and Prudent Measures, and an incidental take statement. U.S. EPA will rely on these provisions in the Biological Opinion to minimize impacts on federal threatened and endangered species from this permitting action.

A copy of the draft fact sheet and NPDES permit will be provided to the USFWS and the Navajo Nation Department of Game and Fish Department for review and comment.

IX. Impact to National Historic Properties

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to consider the effect of their undertakings on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. In order to fulfill its obligations under the NHPA, EPA has become a signatory to the Programmatic Agreement for Navajo Mine under Section 106 of NHPA. This Programmatic Agreement provides an agreement between federal agencies and the Navajo Nation Tribal Historic Preservation Officer and the Advisory Council on Historic Preservation as to how activities affecting historic properties will be identified and protected during the implementation of the broad Four Corners Power Plant and Navajo Mine Energy Project. As noted above, EPA's NPDES permitting action is one part of

this larger Project. The Programmatic Agreement is part of the Administrative Record for this permitting action and is available for review as in the Administrative Information Section below.

X. Consideration of Environmental Justice (EJ) Impact

USEPA has conducted a screening level evaluation of the potential impact of this facility and other permitted facilities within the immediate area on local residents through use of USEPA's EJSCREEN tool. Specifically, USEPA used EJSCREEN to identify facilities near the NTEC Navajo Mine facility that could pose risk to local residents through discharge of environmental contaminants. USEPA has also evaluated whether demographic characteristics of the population living in the vicinity of the facility indicate that the local population might be particularly susceptible to such environmental risks. The results show that, at the time of this analysis, conducted on August 7, 2015, the area in which the facility is located was above the 93rd percentile nationally for ozone. The EJSCREEN analysis of demographic characteristics of the community living near the facility indicates the local population may be at relatively higher risk if exposed to environmental contaminants than the national population. Demographic characteristics that showed potentially sensitive scores were a high proportion of minority and low income population and population with less than high school education.

USEPA also considers the characteristics of the wastewater treatment facility operation and discharges, and whether those discharges, in combination with discharges from local ozone sources, pose exposure risks that the NPDES permit needs to further address. The Navajo Mine facility is unlikely to discharge any noticeable ozone from activities regulated by this permit. As for surface water discharges Navajo Mine has only discharged ten times in the past four decades, and all except one discharge was due to precipitation events. Review of past DMRs indicate no violations of numeric limits from any of the discharges. Thus USEPA finds no evidence to indicate the wastewater discharged from the facility poses a significant risk to local residents. Additionally, because several outfalls permitted by this permit are new, and have been determined to be a "new source" USEPA participated as a signatory party to the EIS process for the broader Navajo Mine and Four Corners Power Plant Energy Project which was conducted by the Office of Surface Mining Reclamation and Enforcement (OSMRE). Based on the findings in the Record of Decision issued by OSMRE the USEPA concludes that the activities at the facility pursuant to the NPDES permit are unlikely to contribute to any EJ issues. Furthermore, USEPA believes that by implementing and requiring compliance with the provisions of the Clean Water Act, which are designed to ensure full protection of human health, the permit is sufficient to ensure the facility discharges to not cause or contribute to human health risk in the vicinity of the wastewater facility.

XI. Permit Reopener

The permit contains a reopener clause to allow for modification of the permit if reasonable potential is demonstrated during the life of the permit or if additional information about threatened and endangered species or critical habitat is obtained which would impact the conclusions currently made under the Endangered Species Act, or in any other instance when new information would cause a significant change in the assumptions made to either the input or outcomes anticipated under the existing permit.

XII. Standard Conditions

Conditions applicable to all NPDES permits are included in accordance with 40 CFR Part 122. and attached herewith in Appendix A.

XIII. Administrative Information

In accordance with 40 CFR §124.10, public notice shall be given by the U.S. EPA Regional Administrator that a draft NPDES permit has been prepared by mailing a copy of the notice to the permit applicant and other Federal and State agencies, and through publication of a notice in a daily or weekly newspaper within the area affected by the facility. The public notice shall allow at least 30 days for public comment on the draft permit.

In accordance with 40 CFR §124.11 and 12, during the public comment period, any interested person may submit written comments on the draft permit, and may request a public hearing if no hearing has already been scheduled. A request for public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. In accordance with 40 CFR §124.13, all persons must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position within thirty (30) days from the date of the public notice. Comments may be received either in person or mailed to:

U.S. Environmental Protection Agency, Region 9
NPDES Permits Section (WTR-2-3)
Attn: Gary Sheth
75 Hawthorne Street
San Francisco, CA 94105
Telephone: (415) 972-3516
Or email: Sheth.Gary@EPA.gov

Interested persons may obtain further information, including copies of the draft permit, fact sheet/statement of basis, and the permit application, by contacting Gary Sheth at the U.S. EPA address, above. Copies of the administrative record (other than those which U.S. EPA maintains as confidential) are available for public inspection between 8:00 a.m. and 4:30 p.m., Monday through Friday (excluding federal holidays).

Additional information relating to this proposed permit may be obtained from the following locations:

U.S. Environmental Protection Agency, Region 9
NPDES Permits Section (WTR-2-3)
Attn: Gary Sheth
75 Hawthorne Street
San Francisco, CA 94105
Telephone: (415) 972-3516
Or email: Sheth.Gary@EPA.gov

XIV. Information Sources

While developing effluent limitations, monitoring requirements and special conditions for the draft permit, the following information sources were used;

1. BNCC's October 2012 NPDES *Permit Renewal Application and Supporting Documents*

2. EPA. 2010 *U.S. EPA NPDES Permit Writers' Manual*. Office of Water, EPA. EPA-833-K-10-001

3. 40 CFR Parts 122, 124, 131, 133, and 434

4. BNCC's 2012 MSGP Annual Comprehensive Inspection Report (August 23, 2012)

5. NNEPA Water Quality Program. 2008. *Navajo Nation Surface Water Quality Standards 2007.*

6. OSM 2014. *Four Corners Power Plant and Navajo Mine Energy Project Biological Assessment.*

7. USFWS 2015. *List of Threatened and Endangered species for the Navajo Mine NPDES Permit.* Consultation Code: 02ENNM00-2015-SLI-0226.

8. USFWS 2015. *Endangered Species Act – Section 7 Consultation Biological Opinion.* Biological Opinion Number: 02ENNM00-2014-F-0064